

1 **UNITED STATES DISTRICT COURT**
2 **FOR THE**
3 **MIDDLE DISTRICT OF PENNSYLVANIA**

4 JAMES GULA,
5 Plaintiff

6 v.

7 MIDLAND CREDIT
8 MANAGEMENT,
9 Defendant

Case No.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

(Unlawful Debt Collection Practices)

10 **COMPLAINT**

11 JAMES GULA ("Plaintiff"), by his attorneys, Kimmel & Silverman, P.C.,
12 alleges the following against MIDLAND CREDIT MANAGEMENT
13 ("Defendant"):
14

15 **INTRODUCTION**

16 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices
17 Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").
18

19 **JURISDICTION AND VENUE**

20 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d),
21 which states that such actions may be brought and heard before "any appropriate
22 United States district court without regard to the amount in controversy," and 28
23 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
24 under the laws of the United States.
25

3. Defendant conducts business in the Commonwealth of Pennsylvania and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff is a natural person residing in Hazelton, Pennsylvania.

7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with corporate headquarters located at 8875 Aero Drive, Suite 200, in San Diego, California 92123.

9. Defendant is a “debt collector” as that term is defined in 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid

1 deceitful and misleading practices, prohibit harassing and abusive tactics, and
2 proscribe unfair or unconscionable conduct, both generally and in a specific list of
3 disapproved practices.

4 12. In particular, the FDCPA broadly enumerates several practices
5 considered contrary to its stated purpose, and forbids debt collectors from taking
6 such action. The substantive heart of the FDCPA lies in three broad prohibitions.
7 First, a “debt collector may not engage in any conduct the natural consequence of
8 which is to harass, oppress, or abuse any person in connection with the collection
9 of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false,
10 deceptive, or misleading representation or means in connection with the collection
11 of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair
12 or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §
13 1692f. The FDCPA is designed to protect consumers from unscrupulous
14 collectors, whether or not there exists a valid debt, broadly prohibits unfair or
15 unconscionable collection methods, conduct which harasses, oppresses or abuses
16 any debtor, and any false, deceptive or misleading statements in connection with
17 the collection of a debt.

18 13. In enacting the FDCPA, the United States Congress found that
19 “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt
20 collection practices by many debt collectors,” which “contribute to the number of
21 personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of
22 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing
23 laws and procedures for redressing debt collection injuries to be inadequate to
24 protect consumers. 15 U.S.C. § 1692b.
25

1 14. Congress enacted the FDCPA to regulate the collection of consumer
2 debts by debt collectors. The express purposes of the FDCPA are to “eliminate
3 abusive debt collection practices by debt collectors, to insure that debt collectors
4 who refrain from using abusive debt collection practices are not competitively
5 disadvantaged, and to promote consistent State action to protect consumers against
6 debt collection abuses.” 15 U.S.C. § 1692e.

7
8 **FACTUAL ALLEGATIONS**

9 15. At all relevant times, Defendant was attempting to collect an alleged
10 consumer debt from Plaintiff.

11 16. The alleged debt at issue arose out of transactions that were primarily
12 for personal, family or household purposes.

13 17. Beginning on or about January 29, 2010, and continuing through June
14 12, 2010, Defendant, its agents, employees, and servants, attempted to collect a
15 debt from Plaintiff.

16 18. On or about January 29, 2010, Defendant sent correspondence to
17 Plaintiff seeking and demanding payment for an alleged debt owed to Bank One.
18 See Exhibit A, Defendant’s January 29, 2010, letter to Plaintiff.

19 19. Defendant failed to identify itself as a debt collector in a conspicuous
20 place on the front of its January 29, 2010, correspondence to Plaintiff. See Exhibit
21 “A,” Defendant’s January 29, 2010, letter to Plaintiff.

22 20. Instead, Defendant placed it in an inconspicuous place on the back of
23 its correspondence to Plaintiff, with the intent to mask its true identity as a debt
24 collector.

1 21. Defendant demanded payment by deceptively claiming that, "special
2 offers are now available to help you resolve your unpaid BANK ONE account."
3 See Exhibit "A", Defendant's January 29, 2010, letter to Plaintiff.

4 22. Defendant presented Plaintiff three options with regard to the debt, all
5 of which required Plaintiff to make a payment.

6 23. Defendant informed Plaintiff that if he made payment arrangements it
7 "will stop applying interest to [his] account; [his] credit report will be update with
8 the payments made; [and] once [he made his] agreed-upon payments to settle [his]
9 account, [his] credit report will be updated as Paid in Full," implying that if he
10 failed to accept payment arrangements, it would communicate with the credit
11 bureau and assess interest to the alleged debt, regardless of the terms of the
12 underlying agreement. See Exhibit "A", Defendant's January 29, 2010, letter to
13 Plaintiff.

14 24. Within five (5) days of its initial written communication with
15 Plaintiff, Defendant failed to send Plaintiff written correspondence advising him
16 of his rights to dispute the debt and/or request verification of the debt.

17 25. Had Defendant provided an appropriate communication in accordance
18 with 15 U.S.C. §1692g, Plaintiff would have been alerted of his right to validate
19 and question the amount claimed and the legal obligation to do so.

20 26. Thereafter, Defendant began contacting Plaintiff on his home
21 telephone in its continued efforts to collect an alleged debt.

22 27. Most recently on June 12, 2010, Defendant contacted Plaintiff on his
23 home telephone seeking and demanding payment of an alleged debt.

24 28. Defendant's actions in attempting to collect the alleged debt were
25 harassing, and highly deceptive.

CONSTRUCTION OF APPLICABLE LAW

29. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

30. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

31. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting,

1 against deceptive collection practices, and protects collectors against liability for
2 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at
3 1318.

4
5 **COUNT I**
6 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES**
7 **ACT**

8 32. In its actions to collect a disputed debt, Defendant violated the
9 FDCPA in one or more of the following ways:

- 10 a. Defendant violated of the FDCPA generally;
- 11 b. Defendant violated § 1692d of the FDCPA by harassing,
12 oppressing, or abusing Plaintiff in connection with the collection
13 of a debt;
- 14 c. Defendant violated § 1692e of the FDCPA by using false,
15 deceptive, or misleading representations or means in connection
16 with the collection of a debt;
- 17 d. Defendant violated § 1692e(10) of the FDCPA by using false
18 representations or deceptive means to collect or attempt to collect
19 any debt;
- 20 e. Defendant violated § 1692e(11) of the FDCPA by failing to
21 disclose in its written communication that the communication is
22 from a debt collector;
- 23 f. Defendant violated § 1692f of the FDCPA by using unfair and
24 unconscionable means with Plaintiff to collect or attempt to collect
25 a debt;
- g. Defendant violated § 1692g of the FDCPA by failing to send

1 written notification, within five (5) days after its initial
2 communication with Plaintiff, advising Plaintiff of his rights to
3 dispute the debt or request verification of the debt; and

4 h. Defendant acted in an otherwise deceptive, unfair and
5 unconscionable manner and failed to comply with the FDCPA.
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7 WHEREFORE, Plaintiff, JAMES GULA, respectfully pray for a judgment
8 as follows:
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- 10 a. All actual compensatory damages suffered pursuant to 15
11 U.S.C. § 1692k(a)(1);
12 b. Statutory damages of \$1,000.00 for each violation of the
13 FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
14 c. All reasonable attorneys' fees, witness fees, court costs and
15 other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.
16 § 1693k(a)(3); and
17 d. Any other relief deemed appropriate by this Honorable Court.
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20

21 **DEMAND FOR JURY TRIAL**

22 PLEASE TAKE NOTICE that Plaintiff, JAMES GULA, demands a jury
23 trial in this case.
24
25

1
2 RESPECTFULLY SUBMITTED,
3 KIMMEL & SILVERMAN
4

5 Date:

10-29-10

By: /s/ Craig Thor Kimmel

Craig Thor Kimmel

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